

G. R. S. IX-5]

Previous references.

Reserve

File No. 62-18

1918-19

Serial Nos. 1-2

( Courts )

Later references

Ch 180-18(1-2)

GENERAL AND REVENUE SECRETARIAT.

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Serial Nos. 1-2

Part B for November 18

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SUBJECT.

Memorial of Lujappa & Kunnappa  
praying for remission of sentence of  
death passed on them in Chittaldurg Ss  
Case No. 5 of 17-18

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2) To, The Registrar, Chief Court  
No. 8199 DL 8-11-18

Forwards a copy of the order  
of H. H. the Maharaja on the above  
memorial rejecting it.

to. Lujappa Rao  
10/12/18

(For Disposal by Circulation)

No. C. 250

.....23.9.1918.

GENERAL AND REVENUE SECRETARIAT.

COUNCIL MATTER.

SUBJECT.

(Clause vi of the Schedule)

Memorial of Lingappa and Kannappa praying for remission of sentence of death passed on them in Chitaldrug Sessions Case No. 5 of 1917-18.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

*C. Balasubrahmanyam*

20th September.....1918.

Chief Secretary to Government.

Extraordinary Member of Council.

First Member of Council.

Opinion recorded.

Second Member of Council.

Extra Member of Council.

WD 2601-1,000-11-5-17

*Off 23.9.18*

*Opinion recorded*

*23.9.18*

*211  
23.9.18*

*877-147  
23-9-18*

## GENERAL AND REVENUE SECRETARIAT.

( Courts )

## NOTES.

File No. 62-18

## FILE HEADING.

Memorial of Lingappa and Kannappa praying  
for remission of sentence of death passed on them  
in Chitaldurg Sessions Case No 5 of 1917-18

From

The Registrar, Chief Court of Mysore

No. 159

Dated 23<sup>rd</sup> Aug 1918  
27<sup>th</sup>

Received 29-8-1918

Diary No. 3643

Enclos. 6 files Spare Copies.  
of records

Serial No. 1

## BRIEF ABSTRACT OF LETTER.

Forwards the memorial with the entire  
records

## NOTES AND ORDERS.

71. O.

Encl. The facts of the case are fully stated  
in the judgment of The Sessions Judge  
of Shimoga

2) The 3 accused were convicted and  
sentenced to death by The Sessions Judge

Serial  
No.

3) The Chief Court, on appeal, have thoroughly examined the evidence and come to the conclusion that the statement of Kencha, the approver has been sufficiently corroborated on material points to convict the first 2 accused, but that it is not safe to convict Halappa the 3rd accused. Accordingly they have confirmed the sentence of death on the first 2 accused and acquitted Halappa the 3rd accused.

4) These 2 prisoners now pray for clemency stating that the conviction has been based on the retracted confession of Kencha, the approver:

367  
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5) The petitioners are the brothers of deceased Gangava a widow aged 24 or 25 at the time of her death. The brothers got a conveyance of all her lands on the promise of giving her certain jewels but failed to give the same. Hence misunderstandings and quarrels arose.

J File No. 62 of 1918-19.

Serial  
No.

between her and the petitioners and she prevented them from ploughing the lands. The deceased was also the mistress of one Mahadevappa and notwithstanding his entreaties of her brother she is said to have persisted in leading an immoral life. The petitioners and Kuncha the brother of a discarded paramour Halappa ~~and~~ Manpre arranged to murder her and moved the dead body to the field of Mahadevappa on the night of 22<sup>nd</sup> July 1917. Next morning the Patel Senter report to the Police. The usual inquest and post mortem were held; the petitioners, Kunchappa and Halappa were arrested. The first three ~~were~~ confessed their guilt before the Taluk Magistrate. Kuncha was given pardon and made an approver. The accused were committed to the Sessions, tried <sup>found guilty</sup> convicted, and sentenced to death. On appeal the chief court affirmed the conviction. Sentence passed on the petitioners but acquitted Halappa.

6) The petitioners now pray for clemency on the grounds that they are innocent, that they are party factors in the village owing to the disputes between the Sengge Mutt & Murgji Mutt, and that the witnesses have deposed against them on account of ill will.

G. R. S. III-2]

General and Revenue  
Secretariat.

Cts File No. 62 of 1918-19.

Serial  
No.

7) The medical evidence in the case clearly shows that death was due to injuries caused to the chest. The evidence of Kenuha the approver though elicited in the Sessions Court, and the elicited confession of the petitioner and also the other circumstantial evidence in the case prove beyond doubt the guilt of the accused. The motive for the murder has already been referred to. The 1<sup>st</sup> accused pointed out the jewels he had given to Diddarva on the day <sup>after</sup> the murder which have been proved to have been usually worn by the deceased. The accused were also seen near the house of the deceased on the night of the murder, and the neighbours swear that they heard some cries in the house of the deceased and Kenuha's cry that his finger was bitten. Kenuha's finger was actually cut and he was treated by the Sub-Post Surgeon. No satisfactory explanation has been given by him for the wound. The blood in the house, & the 2<sup>d</sup> accused coming out of the house in the ~~mid~~ night and following something which was being carried out of the house, are other circumstances which have been charges established. The points now urged in the petition were considered by the Chief Magistrate, and on the circumstances there do not appear to be any good grounds for showing any clemency.

Chief Secy)

1<sup>st</sup> member)

I have perused the case

CS File No. 62 of 1918-19

Serial  
No.

present of our least chief & etc  
 & also the of our senior judge -  
 then our last judge to take  
 a view of the present but taking  
 the least part of the whole  
 the memorial seems to be rejected

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8) may be dealt with by circulation.

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2) Yes

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23.9.18

2)  
 The machine was established &  
 there is satisfactory evidence.  
 There are no constraints to  
 justify any clemency.

The fact may be expected

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General and Revenue  
Secretariat.

Ct File No.

62 of 1918.

Serial  
No.

13)

Inhd with a D. F. n and a D. S. n.

86/ - Typed D. F. n. Subhd

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For Member)

2/2/18

1st app

13)

2/10/18

Fair final note signed by  
The 1st Member is put up.

2/10/18

D. S. n submitted.

Dewang

17/10/18

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5.10.18

Final Note by the First Member of Council.

Subject:—

Memorial of Lingappa and Kannappa praying for remission of the sentence of death passed on them in Chitaldurg Sessions Case No.5 of 1917-18.

*Pages 2 & 3 of office notes*  
The facts of the case are stated in para 5 of the notes in Courts File No.62 of 1918. The three accused persons Lingappa, Kannappa and Halappa were tried before the Sessions Judge, Shimoga on a charge of murder of one Gangavva, the sister of the first two accused, found guilty, convicted and sentenced to death. On appeal the Chief Court affirmed the conviction and sentence passed on the memorialists, but acquitted Halappa.

*g*  
*9*  
*Paper under disposal*  
2. The memorialists now pray for clemency on the grounds that they are innocent, that there are partyfactions in the village and that the prosecution witnesses have deposed against them on account of ill-will.

*K*  
*Page 126 of W.*  
*B & E*  
3. The medical evidence in the case clearly shows that death was due to injuries caused to the chest. The evidence of Kencha, the approver though retracted in the Sessions Court, the retracted confessions of the memorialists and also the circumstantial evidence in the case prove beyond doubt the guilt of the accused. The motive for the deed has been established. The brothers wanted to get rid of the deceased as she prevented them from ploughing the lands they had got from her in exchange for certain promised jewels which, however, were never given. Further the deceased is said to have persisted in leading an immoral life notwithstanding the entreaties of her brothers. The points now urged in the memorial were considered

*WEE*  
by

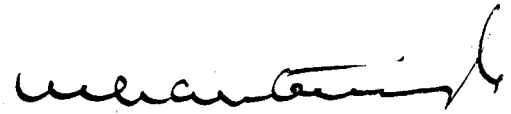
2.

by the Chief Court and there are no good grounds to take a view different from that taken by the learned Judges of the Chief Court.

4. The Council accordingly recommend that the memorial may be rejected.

Page 5 of office  
notes

2 Feb  
1916



First Member of Council

*Submitted to His Highness.*

—•—

\*

*I submit herewith a Final Note by the First*

*Member of Council on the subject of the memorial of  
Lingappa and Kannappa praying for the remission of the  
sentence of death passed on them in Chitaldrug sessions  
case No.5 of 1917-18  
for His Highness' gracious approval.*

*Ch. Vinayag*

*Dewan.*

*6<sup>th</sup> Oct. 1918*

*km*

Record of Cases submitted for the Orders  
of His Highness the Maharaja.

Subject.



Memorial of Lingappa and Kannappa pray-  
ing for the remission of the sentence of  
death passed on them in Chitaldrug sessions  
case No.5 of 1917-18.

404

Order.

KRUP

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12.10.18

General and Revenue  
Secretariat.

ch File No.

62 of 1918.

Serial  
No.

1) Draft &amp; fair order subd.

Draft to the Registrar, Chief Court  
is also put up861  
18/10/18.ch  
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19.10.18

chief sec)

Dwr

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Signed by the Dewan 22.10.18

19) Issue  
23/102 To, The Registrar Chief Court  
No. 8199 of 8-11-18Forwards a copy of the  
order of H. H. the Maharaja on  
the memorial of Lingappa and  
Kannappa rejecting it.

DIARY No. 3443.

Bangalore, 13263  
SECTION 1 Court 5  
Dated 23rd August 1918 62-18  
27  
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Q. REV. C.

29 AUG 1918

CS-3-30  
29/8

From

THE REGISTRAR OF THE  
CHIEF COURT OF MYSORE.

To

*Chief*  
THE SECRETARY TO GOVERNMENT,  
*to*  
GENERAL AND REVENUE DEPARTMENTS.

*Bangalore.*

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja  
by *Kannappa and Lingappa* accused in *Chitaldrug* Sessions Case No.  
*5* of 1917-18 on the file of the Sessions Judge of *Shimoga*  
Division and appellant in Criminal Appeal No. *60* of 1917-18 on the file  
of this Court. *Criminal Referred Case No. 7 of 1917-18.*

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient servant,

*Venkata Ranga Srinivas*

for Registrar.

*Ca*

To

HIS HIGHNESS COLONEL SRIMAN KRISHNARAJA WODEYAR

BAHADUR G. C. S. I.,

MAHARAJA OF

MYSORE.

*for Mercy*

The humble memorial of Lingappa and Kannappa of Siregere, Harihar Taluk and now under sentence of death passed by the Sessions Judge of Shimoga in Chitaldrug - Sessions case No. 5 of 1917-18 and confirmed in Criminal appeal No. 60 of 1917-18 by the Hon<sup>ble</sup> Chief Court of Mysore, most humbly shewth:-

That your Highness's memorialists were residents of Siregere in Harihar Sub Taluk till they were arrested on suspicion for the murder of their sister Gangavva in July 1917, avowedly at the instance of her paramour - P. W. 2. Mahadevappa who seems to have been indirectly working against the interests of these memorialists to whom the said Gangavva had entrusted the management of her husband's estate soon after her husband's death. It is in evidence of the prosecution witnesses that she had even taken Basaiah the son of the 1st memorialist in adoption and she was so affectionate towards the said boy that even before his 3rd year was completed the boy had totally forgotten his natural mother ( wife of - Lingappa) while the ~~0000000000~~ latter had left Sirigere for good.

That there are two opposite factions in Sirigera is an admitted fact and also that the deceased Gangavva chose to discard one lover for another did not in the least affect the secured interests of these memorialists

memorialists for they had built a house in the thrashing floor on the lands owned by them and were using the kana house for storing grain and their other valuables &c. It was usual for the deceased Gangavva to sleep at home with the boy while after supper every day the two brothers - used to return to their kana house and sleep there and thus kept watch over their valuable property. The humble memorialists are the staunch disciples of the local (Sirigere) mutt while it is submitted the learned Judges have chosen to relay on the evidence of the @@@@ disciples of the contending and rival mutt which is even trying to spread its wings over @@ all that it meets on its way even to the total extinction of the rival mutts. It is in evidence of the very witnesses for the prosecution that the Murgi Mutt had tried to usurp the honour of the swamy of Siregere mutt to go in front of the procession of the local Anjanaya utsava now going to the merits of the case keeping the above noted incidents of the locality in mind, the Judges have been led away by presumptions which they were obliged to make to support their @@ inferences. Your memorialists submit that no evidence is on record for assuming want of consideration for the sale deed executed by the deceased in favour of her brother Lingappa while the similar recitals in the countersale deed executed by the said Lingappa on the same date are sufficient to conclude one on the point of passing of consideration between the executants of ~~page~~ <sup>P.</sup> 8 and ~~page~~ <sup>P.</sup> 9.

The learned Judges proceeded entirely on the confessions made before the Amildar of Holalkere. These are really no confessions at all but statements made to avoid the tortures that these memorialists feared would be made on the person of the young boy Basia whom the deceased was fostering with all affection and had him always by her side not excluding the night of her murder.

That these memorialists humbly pray that they were no party to the murder of their own sister who had willingly induced the 2 brothers not only <sup>to</sup> live with her and cultivate the lands for her jointly with theirs and all this to deprive the reversionary rights of her husband's agnates Ignoor Nagappa and Hanumaiah who had already begun to exercise their contingent rights during her life-time by seizing a costly bull soon after her husband's death.

Mahadevappa was no doubt her keeper but he seems to have been also under the thumb of her agnates named above and it will be worthy of note that they had particularly chosen to accompany the prosecution witnesses to the Chitaldrug Sessions to see there was no obstacle in their securing present <sup>enjoyment</sup> ~~engagement~~ of the lands. They have made no secret of their motive whatever as a regular suit is already pending before the Munsiff of Chitaldrug in respect of the very lands recited in Exbts. Page 8 and 9 the registered sale deeds of 10-7-1916.

Now that the 3rd accused has been let off by the Chief Court, the memorialists most humbly submit that it is a most significant fact, in itself quite sufficient to discredit the case for prosecution. That even on the prosecution evidence, <sup>absolutely</sup> ~~absolutely~~ no motive is made out to induce the two brothers Viz. the memorialists to ~~perpetrate~~ the foul deed on their own sister the deceased, who as clear from the evidence had never become such object of hatred to her brothers. The memorialists further submit that <sup>even</sup> ~~was~~ granting there was a wordy remonstrance between the memorialists and ~~and~~ their sister, the deceased who had exchanged each others lands, with a view to keep them in their family as against the reversioners, while the former had as a result of their affection for their sister, quite independent of their exchange of lands agreed

agreed to supply a small jewel out of their savings of the family income. The prosecution did not consider the above facts constituted a sufficient motive for the memorialists to murder their own sister and so superimposed the further theory of the memorialists joining hands with the 3rd accused, who as a discarded paramour, after having put up with his supersession <sup>by</sup> the rival paramour Mahadevappa - 2nd witness for prosecution for over <sup>2</sup> years, felt according to prosecution sudden impulse for revenge against the deceased, to supply the deficit quota of motive <sup>power</sup> ~~power~~, needed to bring the aggregate motive power of all the accused to the requisite level. They humbly submit that the above is a strange enunciation of criminal law, and now that the 3rd accused has been let off by the Chief Court, with the consequent ~~elimination~~ of the additional motive supplied by him, the case for the prosecution stands <sup>deprived</sup> of the requisite motive on the part of the memorialists for so foul a deed. Far from there ~~being~~ any motive for the memorialists to perpetrate the foul deed, the very fact of a tender lad of six years, son of the 1st accused ~~resting~~ that very doleful night by the very side of the deceased who certainly had a corner of her heart for the lad, was in itself a circumstance, to dissuade the memorialists from their criminal intention, even though they as alleged by the prosecution ~~need~~ <sup>had</sup> approached their sister Viz. the deceased, with such intent.

That the story of the prosecution, as to the cause and manner of Gangavva's death is contradicted by the medical evidence as to how the deceased came by her end.

In final the humble memorialists submit, the utter absence of all direct evidence, <sup>touching</sup> ~~touching~~ the accused,

torching the accused, the retracted confession of the approver, who stands himself prosecuted at the instance of the Sessions Judge and upon whose confession, the prosecution case is made to rest. The retracted confession of the accused themselves, whose confessions were before the Holalkere Amildar Magistrate ~~was~~ obtained after their being ~~was~~ in the custody of the investigating Police officer for about a week, while the investigating Police officer, who had followed the accused beyond his taluk had free access to the Lock-up even for the few days, before the so called voluntary confessions ~~was~~ were recorded by the Holalkere Magistrate, the utter absence of any sufficient motive on the part of the accused as already submitted and the acquittal of the 3rd accused by the Chief Court, these and other intrinsic defects of the prosecution case are far from bringing home the guilt to the accused and thus constitute sufficient grounds for the exercise of the high prerogative of mercy by their sovereign.

Left thumb mark



of prisoner No. 2944  
Kannappa.

Left thumb mark



of prisoner No. 2945  
Kengappa.

Bangalore  
Central Jail  
21-8-1915

for  
Chief Jailor  
B. C. Jail.

23-8-15

from her deceased husband, and for some time before her death there had been quarrels among them. The brothers had bought from their sister some land belonging to her husband's estate but had not paid for it (the evidence that they had paid before her death is not trustworthy), and she was pressing for payment, and had tried to prevent them from ploughing the land. Another cause of dispute was her unchastity: soon after her husband's death she had an intrigue with Kalappa the third accused, and afterwards discarded him for one Mahadevappa (prosecution 2nd witness) with whom she continued to consort until her death. She lived in her own house and the evidence of Kallappa (prosecution 4th witness) suggests that possibly she did not confine her favours to Mahadevappa alone. Shortly before her death she had ceased to cook for her brothers, and was supplying Mahadevappa with milk and other things from her house. The case for the prosecution is that in consequence of all these troubles her brothers determined to get rid of her and enlisted the help of Kalappa her former paramour and his brother Kanchappa: and on the night of the 22nd of July 1917 they killed her in her house and carried the body to Mahadevappa's threshing floor.

The case against the first accused Lingappa and his brother Kannappa rests to a great extent on confessions made by them to the Amildar at Holalkere. These statements they retracted before the Committing Magistrate but I am satisfied that the Sessions Judge was justified in believing them to have been voluntarily made. The Amildar's record of the statements shews that he took precautions to secure the freedom of the accused from any outside influences at the time the statements were made: neither of the accused told the Committing Magistrate of any pressure put upon them to confess, and their statements on this point in the Court of Session are of no value.

But though voluntarily made the confessions have been withdrawn and I should hesitate to convict either of the accused on these statements alone. Both however are confirmed by evidence which goes to shew that they are beyond reasonable doubt true as well as voluntary.

In the case of Lingappa the matter is quite clear. Gangavva was killed on Sunday the 22nd of July 1917, and on the next morning Lingappa handed over to the witness Siddavva some jewellery of which two necklaces are proved to have belonged to and to have been usually worn by the deceased. There is no doubt about the delivery of the jewellery to Siddavva and its production by her before the Amildar: the only question is whether any part of it is proved to have belonged to the deceased. Chennabasappa (3rd witness) and Gangavva (5th witness) prove that she wore jewellery like it, but it may be said with some reason that they cannot be trusted to be certain of its identity, though they profess to recognise both necklaces Articles 8 and 9. Mahadevappa (2nd witness) is a person who was very intimate with the deceased and who says he supplied her with a portion of one of the necklaces, some beads and pieces to make it up. I can see no reason why he should not be believed. No doubt it is suggested by some questions in his cross-examination that he might have had reason to wish to get rid of Gangavva himself to make room for a wife: but the proof that Gangavva was killed in her own house is strong, and there is no likelihood that Mahadevappa would have, if he had killed her, put her body in his own threshing floor. He is probably not very well disposed towards the first and second accused, and there is some evidence of a quarrel about nine months before the murder between him and Gangavva on one side and the first and second accused and Kencha and Malappa on the other, but his knowledge of Gangavva's jewels is undoubted, and his identification of Articles 8 and 9 is rendered easily

*correct*

credible by other facts. That Gangavva was wearing a necklace like Article 9 and that it was cut from her neck at the time of her death is proved by the finding on her body of a 'padaka' which must have formed part of a necklace of that kind: the jewels were delivered to Siddavva on the morning after the death of Gangavva, and no reasonable explanation of that fact is given: and Articles 8 and 9 had been cut and not unfastened in the usual way: the strings on which they were threaded were cut or broken when they were delivered to the Amildar, and there is no reason to disbelieve Siddavva when she says that they were received by her in the state in which she handed them over. These facts suggest that it is extremely probable that at least Article 9 belonged to the deceased, and Mahadevappa's identification of it is supported by this probability. Against it there is nothing of any value: the first accused who claims the jewellery as his own has adduced no evidence to shew where he got it or who made it, nor has he chosen to explain why he entrusted his jewellery to Siddavva at that particular time.

Therefore without placing much reliance on any comparison of the loose padaka (Article 1) with the necklace (Article 9) though it is true there is a 'padaka' missing from the latter and Article 1 may as a comparison shews, very well have been a portion of Article 9, there is reason for accepting Mahadevappa's evidence on this point.

Then there is the proof that Gangavva was killed in her own house.

The only suggestion made against the evidence of Mallappa is that there is some dispute between two bodies the Sadar Sivachars and Panchamachars. The existence of any active dispute is not very satisfactorily proved but as-

suming

assuming that there is some rivalry between the two communities that will hardly account for the evidence in this case.

Mallappa (4th witness) is undoubtedly a neighbour of the deceased, and he says he heard her cries, and heard Kencha (1st witness) complain that his finger had been bitten. Whether he really recognized Kencha's voice may be doubted, but that he heard the cries which he describes seems very probable. Gangavva (5th witness) says she saw two men one of whom was carrying something on his head go from Gangavva's (deceased's) house towards the threshing floors: she is the next door neighbour of the deceased on one side, as Mallappa is on the other. I can find no very good reason for refusing to believe her statement, but it is not necessary to rely on it on this point.

There was blood found in the house also, and that is not accounted for by the first or second accused, who were occupants of the house. It may have been Gangavva's blood or the blood of the man whose finger was bitten, but unexplained it confirms the confessions by rendering it probable that the murder was committed in the house occupied by the first accused himself and his brother.

There is moreover no reason to suppose that Gangavva slept elsewhere that night. She took her evening meal in the house of L. Basappa (10th witness) and left about 10 P.M. Where she went afterwards there is no evidence. The murder must have been about midnight if Mallappa is telling the truth, a time when the deceased would naturally have been in her own house.

There is further the evidence of K. Basappa and Siddappa, relations of accused 1 and 2. They were obviously in the Sessions Court trying to help the accused, but they

prove

prove none the less that Lingappa came to them early on the morning of the 23rd of July and told them of Gangavva's death. These witnesses were cross-examined in the Sessions Court by the Public Prosecutor with the Judge's permission. Siddappa had said to the Committing Magistrate that the first accused came to him early in the morning and told him that he had beaten Gangavva and that she was dead; in his cross-examination in the Sessions Court he admitted that that statement was true. It is impossible not to believe that it is true, in the circumstances. This again strongly confirms the confession made later to the Amildar by the first accused.

Against this it is argued that all that Basappa and Siddappa said at the inquest was that the first and second accused 'might have killed' Gangavva. That is no doubt so, but at the inquest neither of them was probably anxious to say more of what he knew than was necessary, and there is nothing to suggest that they were asked further questions to ascertain the extent of their knowledge. Their evidence then was confined to their knowledge of the ill-feeling that had grown up between the brothers and their sister and its causes.

It is true also that the statement 'I have beaten Gangavva and she is dead' is not accurate if the confession is true, because in the confession the first accused does not say that he actually took part in the killing: but that difference obviously does not detract from the value of Siddappa's evidence on this point: even if Siddappa reported accurately only the words used, the first accused may well have used them to mean that his sister died as a result of a beating in which he was concerned.

Thus apart altogether from the evidence of the approver Mencha the evidence against the first accused is amply sufficient to justify the Sessions Judge and the

assessors in convicting him of the murder.

It is hardly suggested that the confession is not a confession of murder: the accused says that he stood by while his sister was murdered and gives the reason why the murder was committed. The statement in no way suggests that he was a mere passive observer of the crime; the motive which he asserted as the reason why 'we all joined' in the murder is one which affects him as much as his brother.

There remains the evidence of Kencha. A pardon was tendered to him in the Committing Magistrate's Court and he made a long statement which he has withdrawn in the Sessions Court, alleging that it was put into his mouth by the Police Inspector. This statement has been admitted by the Sessions Judge under Section 288 of the Code as evidence in the case: its weight is weakened by the fact that the witness was not cross-examined in the Committing Magistrate's Court, and while it is pretty clear that his story in the Sessions Court is false, it does not follow of course that his story in the Committing Magistrate's Court was true.

But there are good reasons for accepting it in the main as a true account of the murder. There was a wound on one of the fingers of the witness' left hand, which in the Committing Magistrate's Court he said was caused by a bite given by the deceased when he was holding her mouth in the dark. He explained this wound to the medical officer as due to a cut with a sickle, but in the Sessions Court he said it was due to the bite of a calf. There is no reason why he should have made these different statements if his statement to the Committing Magistrate was false. He must have known how the wound was caused.

The Medical Officer thought that his story <sup>to him</sup> was unlikely to be true as the wound did not look like a clear cut

with

with a sharp weapon, and questioned him about the instrument without, he says, getting a satisfactory reply: and it was possibly in view of this attitude of the medical officer that the story of the calf-bite was put before the Sessions Judge. The result seems to me to confirm the statement made to the Committing Magistrate. It is confirmed also by the evidence of the ninth witness which there is no reason to doubt, that Kencha's finger was uninjured on the evening of the 22nd of July, and the Inspector proves that it was injured by the time of the inquest on the morning of the 24th.

Taken with the evidence of Mallappa (4th witness) to which reference has already been made, this wound on the finger of Kencha strongly corroborates his statement to the Committing Magistrate that he was present and a participant in the murder.

Exhibit C<sub>1</sub> is a part of his statement as recorded at the inquest: it with Exhibit C<sub>2</sub>, was apparently put in evidence by the Sessions Judge to contradict his statement in the Sessions Court that the whole of his story was put into his mouth by the Police Inspector, and it certainly has that effect. It is an improbable story and the witness is probably right in the Sessions Court in saying that it was untrue, but it seems that ~~he~~ so early as the 24th July <sup>he</sup> admitted his knowledge of the murder though he then alleged that he took no part in it: he said he saw it through the window. It does not appear at all probable that this statement, or C<sub>2</sub> in which he explains the cut on his hand as due to an accident with a sickle, was put into his mouth by the Inspector at the inquest, and if it was not, then his statement in the Sessions Court that he knew nothing of the murder and the whole story is made up by the Police, is greatly weakened.

Mr. Govindaraghava Iyer has asked us to exclude from consideration all the statements made at the inquest, on the ground

ground\* that the inquest is an investigation under Chapter XIV of the Code of Criminal Procedure, and consequently the statements made to the Inspector who conducted it, are made to the police in the course of an investigation and are excluded by the provisions of section 162. He did not cite any authority in support of his conclusion but his argument finds support in the letter of the Code. In section 174 (1) the inquest is described as an investigation, and section 174 (1) finds a place in Chapter XIV of the Code, but I think there are reasons for believing that section 162 does not apply to it and is confined to investigation of offences under section 155 and 156 or other sections if any there be in the chapter authorizing an investigation for the purpose of ascertaining the perpetrators of an offence.

The investigation under section 174 (1) is not this: it is a public enquiry intended to establish the cause of deaths which may be suicidal or accidental, or which raise a suspicion of an offence. It may result in a finding that an offence has been committed and may even result in the disclosure of the perpetrators: but that is not its object: the intention is to ascertain publicly the cause of the death, with a view no doubt, that if any offence is found to have been committed, that offence may be investigated and the perpetrator found. Its results are to be embodied in a report which is to be signed not only by the police officer who conducts it, but by the panchayatdars also. All this it may be said will not prevent the inquest from being an investigation under the Chapter, and no doubt that may be so, but it will afford reason for believing that section 162 was not intended to apply to it: that section applies to a proceeding for the collection of evidence to be used for or against some "accused" person known or unknown; the writing is not to be used as evidence unless

at the instance of the accused. The investigation under section 174 has no necessary reference to any accused person known or unknown. The two are not in pari materia.

Perhaps the strongest reason for refusing to accept Mr. Govindaraghava Iyer's argument is that if he is right section 175 (1) is largely superfluous. If the two investigations are on the same footing sections 160 and 161 provide for all that is necessary except the power to summon panchayatdars. But the power to summon witnesses is repeated in section 175 (1) and not only are they bound by that section to answer questions, but they are bound also to answer them truly. I am aware that it has been suggested that the word 'truly' was retained by oversight in section 175 (1), when the provisions of section 162 were amended by its omission, but it is at least equally possible that it was retained intentionally, the investigation under section 174 being in the nature of a public judicial enquiry.

And if it were necessary to repeat the provisions of sections 160 and 161 in section 175, it is significant that the provisions of section 162 are not also repeated in that section.

I should have no doubt at all in this matter but for the word 'investigation' in section 174 (1), and I find it easier to suppose that that word was overlooked when section 162 was framed as it is, than to suppose that section 175 (1) would have been enacted in its present form if section 162 applies to section 174.

For these reasons I prefer to hold that section 175 is the only one in the Chapter which refers to witnesses at an inquest, and that the provisions of section 162 must be confined to statements under section 161.

Statements recorded at inquests under section 174 have been I think for many years used in our Courts for contradicting or corroborating witnesses at a trial and I cannot but feel that if we are to exclude them we are likely to exclude evidence which may be at least as often as not favourable to the accused, and are not likely in any event to further <sup>the</sup> interests of justice.

I have on these considerations examined Exhibits C<sub>1</sub> and C<sub>2</sub> as statements admissible to shew that the statement of Kencha in the Sessions Court is untrue.

Exhibit P<sub>1</sub> is a confessional statement made by Kencha before the Amildar Magistrate at Holalkere; it was probably admitted as corroboration of the statement admitted under section 288, but it was used in argument for the purpose of contradicting that statement by shewing some discrepancies between them. I do not think it has that effect; substantially it is the same story; but I do not think that as corroboration any value can be attached to it. To my mind the value of corroborative statements under section 157 is not so much that they shew consistency on the part of the witness, as that what he has stated in the Court is what was said by him before he had time or opportunity to think out a false story, or to learn one from others. That consideration can hardly be said to apply to Exhibit P<sub>1</sub>, though I have no doubt that was a voluntary statement and though it may be that the Amildar is a person "legally competent to investigate the fact". I have not therefore taken P<sub>1</sub> into consideration as confirmatory of the statement admitted under section 288: and I may state here that I have excluded from consideration the statement of the first accused made at the inquest on the ground that the Police Inspector who conducted the inquest is a Police Officer within the meaning of section 25 of the Evidence Act.

My conclusion is that Kencha was present at the murder, that the circumstances do not suggest that his story of tuition by the Inspector is true, and therefore there is no reason why his statement to the Committing Magistrate should not be substantially true, but not being tested by cross-examination we must be careful how we accept it in detail.

Now that part of it which deals with the acts of the first accused confirms the confession, as shewing that the first accused did not himself actually help to kill the deceased though he joined in the crime.

There is thus a great deal of evidence to confirm the first accused's ~~confession~~ admission to the Amildar, and I have no doubt of his guilt.

There is very much less evidence in the case of the second accused Kannappa.

He made a confession to the Amildar which I do not doubt was voluntary, and which he retracted before the Committing Magistrate. It is a short statement and in it he says that the first accused, Kencha, and Halappa squeezed the neck of the deceased and he then squeezed it also. <sup>This</sup> ~~That~~ it is contended shews that his statement is not likely to be true, but to my mind it shews that it is not likely to be tutored. The difference between his statement and his brother's and Kencha's seems to me to deprive it of any great value as against co-accused persons, but rather to strengthen it as against the maker himself. It is one thing somewhat recklessly to make a general statement as to the acts of others, and quite another to accuse oneself of murder. It is doubtless unlikely to be true that all the assassins took it in turn to press the woman's throat, but it seems to me very much easier to discard the accused's account of what his companions did as comparatively unim-

portant

unimportant, than to infer from that account that he was probably not present himself at the murder.

I see no reason why his statement in so far as it accuses himself should not be accepted as true, and its retraction is not sufficient to dispose of it. Kencha who was certainly present at the murder confirms it, and I have already given reasons for believing that Kencha though he was not cross-examined is more likely to have been telling the truth in the Committing Magistrate's Court than in the Sessions Court or at the inquest.

There is further confirmation in the statements of Chennabasappa (3rd witness) and Gangavva (5th witness) but it is not strong. It may be quite true that Kencha, and his brother and the first accused and second accused were sitting on the pial of Chennabasappa's shop at 8.30 P.M. on the 22nd of July talking over the iniquities of Gangavva (the deceased) but the value of that fact is not great in a case when all the parties live in the neighbourhood of that shop and may easily have dispersed to their own homes after their talk.

Gangavva's statement is more valuable if true, and as I have already said, I have no very good reason for dis-  
-carding ~~it~~ <sup>as</sup> it, but I have learned in the course of considerable ~~experience~~ <sup>experience</sup> as a magistrate and judge in the South of India to view with suspicion the statements of the witness who gets up at night for natural purposes just in time to see the murderers go by with the corpse, or the thieves with their booty, as the case may be. It is true that this witness' statement is supported by what she said at the inquest, and if the patel is to be believed, by a statement made to him on the morning of the 23rd of July very shortly after the

murder

murder: but I should have been more impressed with this latter statement if the patel had not professed to narrate it practically word for word in the Court of Session from his memory. As it is I prefer on the whole to rest on the statement of Kencha who is very definite as to the part played by the second accused in the murder; and I think the confession supported by his statement is evidence sufficient to justify the conviction.

In the case of the third accused Kenchappa's brother Halappa there is no confession, and his conviction must rest on the ~~confession~~ evidence of his brother, of Mallappa, and Chennabasappa, and the confession of the first and second accused if they are available under section 30 of the Evidence Act. There is also some evidence of his concealing himself and visiting the village stealthily after the murder. I have already said that such corroboration of Kencha as is afforded by Chennabasappa's evidence is not of great value. The accused himself supports Mallappa's statement that he met him in the street that Sunday night. In the Committing Magistrate's Court he said that having heard of his daughter's death he was going to call one B. Hanumappa and met Mallappa in the street.

Kencha's statement in Exhibit P<sub>1</sub> is "Halappa and Linga both woke me up and brought me", i.e., to the deceased's house. He does not say that Halappa took any part in the killing, but only that after the body was put into the basket he was one of those who helped to carry it out of the house. In the Committing Magistrate's Court he says what seems to me to amount to the same thing, that is to say that Lingappa woke him up and Halappa was standing in the road and all three went to Gangavva's house. If those statements are true the occasion on which Halappa

met

met Mallappa cannot have been just before the murder, because he was then alone: and considering the fact that Halappa's house is in the immediate vicinity of those of Mallappa and the deceased it is difficult to say that Mallappa's statement affords any strong corroboration of Kencha's story. Halappa may have been in the street on any business by himself. There is nothing to connect his presence there with the murder and it is not a part of the approver's story that his brother went out into the street alone for any purpose connected with it.

The confessions of the accused 1 and 2 can no doubt be used under section 30 if they are confessions of murder. But they do not coincide with Kencha's statement as to the part played by Halappa, and they were not made in Halappa's presence: I do not think it would be safe to accept them as evidence of his complicity.

It is not denied by Halappa that he left the village early on the morning of the 23rd of July and as the Sessions Judge observes he has not adduced any evidence to shew why he went away. That is no doubt suspicious; his return by stealth and his attempt to escape arrest are, if the evidence is true, also to some extent suspicious circumstances, but may be explained by the fact that he must have known he was one of the persons noted in the inquest report as one of the murderers. That would account for his desire to keep out of the hands of the police whether he was guilty or innocent. The evidence is not therefore of any great weight.

There is also some evidence of motive but it is rather remote: Halappa had been discarded by Gangavva some two or three years before the murder, and some eight or nine months before that occurrence had quarrelled with her and his successful rival Mahadevappa. Accepting the evidence of these events

SUBJECT.....

Diary No. of letter replied to.....

Section *cb*

File No. *62-18*

Serial No. *2*

GENERAL AND REVENUE SECRETARIAT

, the

191

No. *58799 (mess pl)*

Date of issue.....

*8/11/18*

To

Signed by.....

*W. M. G. S. S. S.*

*The Registrar, Chief Court  
of Mysore*

*Sir,*

*With reference to*

*your letter No 159 of 23.8.18*

*27*

*forwarding memorials of*

*Kannappa and Lingappa*

*praying for remission of*

*sentence of death passed*

*on them in Chitaldeny*

*session Case No. 5 of 1917-18*

*I am directed to forward*

*herewith for <sup>being</sup> communication*

*over.*

*CP  
starts*

tion to the accused under  
sentence of death in the  
Bangalore Central Jail,  
Copy of the order of  
H. H. The Maharaja rejecting  
the memorials.

2. The records received  
with your letter are  
herewith returned

I have

*MK*  
19.10.18.

For Chief Secy.

86  
18/10/18.  
*OK*  
19/10/18

List of enclosures.

Copied by

Examined by

In the matter of Memorials of  
Kannappa and Lingappa accused in Chitaldang  
Sessions case No 5 of 1917-18 on the file of the  
Sessions Judge of Shimoga Division and appellants  
in Criminal Appeal No. 60 of 1917-18 on  
the file of the Chief Court praying for  
the remission of the sentence of death passed on  
them,

His Highness the Maharaja

directs

that the Memorials be rejected

MS  
19.10.18

MS

22.10.18

AL

Dewan

15/11

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday, the 31st day of July 1918.

## A R S E N I T.

SIR ABELIE S. MILLER, Rt. CHIEF JUDGE,

and

MR. JUSTICE G. CHANDRASEKHARA AYYAR.

Petition of Criminal Appeal No. 60 of 1917-18/Criminal Referred Case No.7 of 1917-18 against the conviction and sentence passed by the Sessions Judge of the Shimoga Division under Section 302 of the Indian Penal Code in Chitaldrug Sessions Case No.5 of 1917-18.

J U D G M E N T.

The Chief Judge

The appellants have been convicted of the murder of one Gangavva and sentenced to death.

There is evidence which I need not discuss but which I accept proving that the deceased was a widow and was living with her brothers the 1st and 2nd accused, Lingappa and Kannappa. The names given by the witnesses to these two men are not always the same but I take those entered in the charge. They lived in the house inherited by Gangavva

from

it would be very unsafe to infer that at the date of the murder he was in a mood to join Gangavva's brothers in doing away with her.

Thus while there cannot be said to be no corroborative evidence of Kencha's statement, what there is is very weak, and bearing in mind the fact that Kencha has not been cross-examined I do not think it safe to convict Halappa of the murder.

The convictions of the first and second accused must in my opinion be confirmed, and that of the third accused must be set aside. The sentences of death passed on the first and second accused must also be confirmed, the third accused being acquitted and set at liberty.

The conduct of the trial by the Sessions Judge has been criticized by Mr. Govindaraghava Iyer, and is open to the remark that the Judge seems to have to a considerable extent taken upon himself the duties which properly appertain to the Public Prosecutor, by questioning the witnesses at length in a way to elicit evidence favourable to the prosecution. But he had before him witnesses who denied wholesale the truth of their own statements made on oath before the Committing Magistrate and I am unable to say that he had no justification for what seems to have been his view that the Public Prosecutor did not fully realize the importance of eliciting facts tending to shew whether the denial of the original statement was more likely to be true in whole or in part - and also whether the confessions retracted before the Committing Magistrate were more likely to be true than the retractation. And we were not asked to hold that any particular piece of evidence elicited by the Judge under the power conferred on him by section 165 of the Evidence Act was such as it would not have been open to the Public Prosecutor to elicit, except that here and there both in chief examination and in examinations by the Judge, statements

statements which must be mere hearsay have been admitted on the record. The discretion given by section 165 should be exercised sparingly and with restraint and in the present case I am inclined to think that some of the questions put were unnecessary and perhaps injudicious, but there is nothing to suggest that the accused have not had a fair trial or that any miscarriage of justice has resulted from the action of the Sessions Judge.

Mr. Govindaraghava Iyer raised a question whether statements made to the police or at the inquest can be used under section 157 of the Evidence Act to corroborate statements not actually made at the trial before the Court of Session but treated as evidence in the case under section 288 of the Code. I do not think it necessary to decide that question. Mr. Govindaraghava Iyer has the authority of 34 Bombay 599 in his favour, but there is no discussion there of the point taken by the Government Advocate here, that evidence admitted under section 288 becomes the 'testimony of the witness' in the Sessions Court, within the meaning of section 157. Whatever be the right view of the law on this question, I am clear that a statement which is put in to contradict a statement made in the Sessions Court even if it is put in by the prosecution, cannot be excluded merely because it may indirectly go to support the statement put in under section 288, though it is not consistent with that statement.

(Sd.) Leslie P. Miller

CHIEF JUDGE.

MR. JUSTICE K. S. CHANDRASEKHARA AIYAR.

I concur.

(Sd.) K. S. Chandrasekhara Aiyar

JUDGE.

Copy

S. Venkataranga Iyer  
By: Registrar